



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,970	11/13/2003	Brian Birrenkott	906346039245	9431

28104 7590 03/02/2005

JONES DAY  
77 WEST WACKER  
CHICAGO, IL 60601-1692

EXAMINER
----------

KIM, CHRISTOPHER S

ART UNIT	PAPER NUMBER
----------	--------------

3752

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/712,970

Applicant(s)

BIRRENKOTT ET AL.

Examiner

Christopher S. Kim

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 8-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/17/04</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The response filed December 17, 2004 is acknowledged.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Applicant remarked that the phrase "such that gravity exerts a downward force on the first fluid" is both "particular" and "distinct" and is technically accurate. Applicant further remarked that there is no need nor any requirement to make stylistic changes. In view of applicant's remarks, the objection is withdrawn. The phrase has been considered nothing more than stylistic and not further defining the claims.

### ***Claim Objections***

4. Claim 13 is objected to because of the following informalities: it appears that claim 13 should depend from claim 12. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

5. Claims 1-5, 8, 9, 11, 12, 14-17, 19-21, 23-25, 27-29, 31-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Norman (4,878,619).

Norman discloses a spraying device comprising a cartridge 10 and a sprayer body 12. The sprayer body 12 comprising: a conduit 80; a movable valve 82; a manual actuator 76; an orifice 28/34.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10, 13, 18 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norman (4,878,619).

Regarding claim 10, Norman discloses the limitations of the claimed invention with the exception of the cartridge being made of flexible plastic. Office notice is given flexible plastic. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have made the cartridge of Norman from flexible plastic to prevent corrosion.

Regarding claim 13, Norman discloses the limitations of the claimed invention with the exception of the check valve having a duckbill portion and an umbrella portion. Office notice is given a check valve having a duckbill portion and an umbrella portion. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the check valve of Norman with a check valve having a duckbill portion and an umbrella portion to provide an integral/one piece check valve.

Regarding claims 18 and 26, Norman discloses the limitations of the claimed invention with the exception of the anti-siphon unit. The specification, on page 5 paragraph 26, provides that anti-siphon units are well known. It would have been

obvious to a person having ordinary skill in the art at the time of the invention to have provided an anti-siphon unit to the device of Norman to prevent back flow.

8. Claims 6, 22 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norman (4,878,619) in view of Packard (2,991,939).

Norman discloses the limitations of the claimed invention with the exception of the metering disc. Packard discloses a metering disc 55. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the metering disc of Packard to the device of Norman to regulate the flow.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1-6 and 8-33 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Christopher S. Kim  
Primary Examiner  
Art Unit 3752

CK